

**DECISION**



**THE CC  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-182608**

**DATE: FEB 19 1976**

60534

**MATTER OF: Robert T. Good - Restoration of annual leave 98591**

**DIGEST:**

1. United States Park Police are subject to the Annual and Sick Leave Act of 1951, as amended, and accrue annual and sick leave while in a pay status. When a Park Police officer is absent from duty due to an injury or illness resulting from the performance of duty and is not charged for that absence pursuant to section 5 of Public Law 88-471, he remains in a pay status during such absence and continues to accrue annual and sick leave.
2. United States Park Policeman who was injured in the performance of duty and thereafter absent from duty for nearly 1 year without charge to leave pursuant to section 5 of Public Law 88-471 forfeited 204 hours of annual leave. The forfeited leave may be restored to his account in view of 5 U. S. C. § 6304(d)(1)(C) and since, in cases of prolonged illness preceding the end of a leave year, the employee may be presumed to have requested proper scheduling of annual leave otherwise subject to forfeiture.

The Associate Director for Administration, National Park Service, United States Department of the Interior, requested an opinion concerning section 5 of Public Law 88-471, August 21, 1964, 78 Stat. 582, and its relation to the request of Mr. Robert T. Good, a retired United States Park Policeman, for restoration of 204 hours of annual leave forfeited at the end of the 1973 leave year.

The Associate Director states that Mr. Good was injured on September 8, 1972, while in the performance of his official duties. He returned to duty in a light-duty status for a few days during 1973, but commencing on February 20, 1973, was placed in what the Park Service describes as a "continuous administrative sick leave status" until his retirement for disability on January 31, 1974. Mr. Good did not schedule annual leave to be taken during the nearly 1-year period that he was on "administrative sick leave." As a result he

forfeited 204 hours of annual leave at the end of the 1973 leave year by operation of the annual leave accumulation provisions of 5 U. S. C. § 6304 (1970).

The Park Service inquires specifically as to the applicability to United States Park Police of Public Law 93-181, December 14, 1973, which, insofar as is pertinent, amends 5 U. S. C. § 6304 by adding a new subsection d(1) to provide for restoration of annual leave lost by operation of that section because of:

"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

"(B) exigencies of the public business when the annual leave was scheduled in advance; or

"(C) sickness of the employee when the annual leave was scheduled in advance."

Insofar as the above provision is applicable to United States Park Police, the Park Service inquires further whether, under 5 U. S. C. § 6304(d)(1)(C), it was necessary for Mr. Good to have scheduled his 204 hours of annual leave in advance in order to be eligible for its restoration. In addition we are asked whether a United States Park Police officer accrues annual and sick leave while on "administrative sick leave."

Public Law 88-471 provides that effective with the first pay period which begins after January 1, 1964, the sick leave provisions of the Annual and Sick Leave Act of 1951 (65 Stat. 679) shall be applicable to officers and members of the United States Park Police force, among others. Such individuals were already covered by the annual leave provisions of the Annual and Sick Leave Act. See Senate Report No. 1347, 88th Congress, 2d Session, at page 1. Since section 3 of Public Law 93-181 amended 5 U. S. C. § 6304, which is derived from the Annual and Sick Leave Act, United States Park Police are subject to its provisions.

As indicated by the Park Service, subsection 6304(d)(1)(C) does require, as a condition to restoration of an employee's otherwise forfeited annual leave due to sickness, that the annual leave in question be scheduled in advance. We believe, however, that this requirement

for advance scheduling requires further explanation insofar as it applies to an employee who has been ill for a considerable period of time up to and preceding the end of a leave year so that he is effectively precluded from using his annual leave for purposes other than illness.

While an employee may generally have sick leave charged to his annual leave account, we have held that annual leave may not be substituted for sick leave on a retroactive basis solely for the purpose of avoiding a forfeiture of annual leave at the end of the leave year. 31 Comp. Gen. 524 (1952). See Federal Personnel Manual Supplement 990-2, book 630, subchapter 83-5. However, we have recognized an exception in the case of an employee who suffers a prolonged illness prior to the end of a leave year. Thus, in E-178583, June 14, 1973, we stated the following:

"Where \* \* \* an employee's illness commenced a considerable period of time prior to the end of a leave year, thus precluding his use of annual leave for purposes other than illness, we have presumed that if he had been advised of the state of his leave account he would have requested forfeitable annual leave to be applied to cover an equivalent period of absence prior to the close of that leave year. Where lack of knowledge of his leave balance is not attributable to any fault on the part of the employee, we have interposed no objection to the substitution of annual leave for an equivalent amount of sick leave, notwithstanding that such annual leave may have been regarded as forfeited at the end of a prior leave year. E-176083, July 10, 1972 \* \* \*."

The result in such cases has been an adjustment in the employee's leave, ultimately to the benefit of his sick leave account.

We recognize that this line of cases is not squarely in point, particularly since Mr. Good's situation does not involve a juxtaposition of his annual and sick leave accounts. The Park Service characterizes the benefit Mr. Good received throughout the period of his absence from work due to a duty-related injury as "administrative sick leave." In fact it is neither administrative leave nor sick leave. Section 5 of Public Law 88-471 does not provide for

leave as such but provides rather that periods of absence for injury or illness resulting from the performance of duty will not be charged to the account of any officer or employee of the United States Park Police force. The language of that section is as follows:

"SEC. 5. (a) No sick leave shall be charged to the account of any officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia or the United States Park Police force or the White House Police force for periods of absence due to injury or illness resulting from the performance of duty.

"(b) The determination of whether an injury or disease resulted from the performance of duty shall be made pursuant to regulations promulgated by the Commissioners of the District of Columbia for officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, by the Secretary of the Treasury for the White House Police force and by the Secretary of the Interior for the United States Park Police force."

Regardless of the particular characterization of the noncharge to Mr. Good's account for his duty-related absence in 1973, that absence was related to "sickness" as that term is used in 5 U.S.C. § 6304(d)(1)(C). As indicated at page 5 of House Report No. 93-456, 93d Congress, 1st Session, the intent behind enactment of section 5 of Public Law 93-191 is to permit an employee who becomes ill during or prior to scheduled annual leave to use that leave at a later date. The same basic consideration applies in the case of an employee whose use of annual leave is precluded by an injury or sickness otherwise chargeable to his sick leave account as in the case of an employee who, pursuant to legislation, is not charged for an absence which is attributable to an injury or disease resulting from the performance of duty. In neither event is the employee able to avail himself of annual leave for its intended purpose of allowing the employee time for a vacation and personal business without loss of pay.

Because virtually identical considerations are involved, we believe that the general principle enunciated in B-178583, *supra*, is equally applicable to the situation of an employee who forfeits annual leave while taking sick leave or one who forfeits annual leave while

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absent from duty without charge because of a duty-related injury or illness. We presume that if Mr. Good had been properly advised of his annual leave balance he would have requested scheduling in advance of annual leave otherwise subject to forfeiture. The 204 hours of annual leave forfeited may be recredited to his leave account under 5 U.S.C. § 6304(d)(1)(C).

With regard to the Park Service's inquiry regarding a Park Policeman's accrual of annual and sick leave while on "administrative sick leave," 5 C.F.R. § 630.202 provides that a full-time employee earns leave during each full biweekly pay period while in a pay status or while in a combination of a pay status and a nonpay status. As noted above, section 5 of Public Law 88-471 provides for no charge to the account of an officer or member of the United States Park Police force for periods of absence caused by injury or illness resulting from the performance of duty and has the effect of continuing the officer or employee in a pay status during such periods of absence. The individual therefore continues to accrue annual and sick leave during such absence.

In view of the above Mr. Good's forfeited annual leave may be restored.

R.F.KELLER  
Deputy Comptroller General  
of the United States